

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WENDY GAUTHIER,

Plaintiff,

v.

SUNHEALTH SPECIALTY SERVICES,
INC. and SUNBRIDGE HEALTHCARE
CORPORATION,

Defendants.

Civil Action No.: 4:05-cv-40119

**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE EVIDENCE RELATED TO
OTHER EMPLOYEE WHO IS NOT COMPARABLE TO THE PLAINTIFF**

The Plaintiff has indicated that she will offer documents from the employee files of other CNAs. The Defendants agree that files related to attendance issue of other employees and the disciplinary action taken in regard to those attendance issues are relevant to this litigation. One of the employee files the Plaintiff indicates that she will offer into evidence includes disciplinary issues unrelated to attendance and therefore is not relevant to this matter. Employee No. 9 was disciplined for issues related to alcohol abuse and for having an unprofessional attitude at work.

See Exhibit A.¹

Particularly inflammatory are references to Employee No. 9 lying in a patient's bed while having a strong smell of alcohol. Following this incident the employee refused alcohol testing and the employee quit the position. This incident and the earlier incidents involving Employee

¹ In order to preserve the privacy of the other employee's whose files have been produced in discovery, their names and personal information was redacted.

No. 9 using vulgar language are not relevant to the claims in this matter and their prejudicial impact far out ways any minor probative value this employee's file could offer.

Therefore, the Plaintiff should be precluded from offering documents related to Employee No. 9.

Dated: August 27, 2008

Respectfully Submitted,

**SunHealth Specialty Services, Inc., and
SunBridge Healthcare Corporation,**

by its attorney,

/s/ Michael Williams

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CERTIFICATE OF SERVICE

I hereby certify that this Document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 27, 2008.

/s/ Michael Williams

PERFORMANCE IMPROVEMENT PLANName [REDACTED] Job Title CNA Facility SidewoodNature of Concern: Absenteeism Dress Code Behavior Performance
 Tardiness Other (describe) _____

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: _____

Specific Description of Issue, Situation or Behavior (what, where, how):

Irradiant behavior - lying in bed & pt - "consoling pt"
strong smell of alcohol on breath - eyes very
glossy - Joe Latone RN Employee refused alcohol testing
offer of employee assistance. Employee chose to leave of
own accord.

Immediate and Continued Change Needed for Success:

This is a repeat Behavior of Nov. 21- Behavior
inappropriate & strong odor of alcohol - Unsteady on keefest
& while serving Breakfast last - Crashed into wall & then walked
away.

Action Taken Documented Verbal Notice Suspension for 1 days to start on
 Written Notice (Date) 12/1/03 and return to work on
 Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: _____

Joe Latone RN

Supervisor's Signature

12-1-03

Date

Employee's Signature

Date

 Employee Refused to Sign - Requires Witness Signature

Don Kessell DMS

Dept. Head/Administrator

Date

Witness Signature

Date

Copy to Personnel File (White) Employee (Canary) Supervisor (Pink)

EMPLOYEE COUNSELING FORM

DATE: 8/20/96

EMPLOYEE: [REDACTED]

PROBLEM:

[REDACTED] came in late & then became upset when she wasn't allowed to skip rounds & start her assignment right away but was asked to do Researcots that needed to be done before breakfast. [REDACTED] became upset & angry & co workers Verbal. Comments made back & forth [REDACTED] upset & thinks her assignment is too heavy but she had completed, & set up's & in although yesterday the jobs did one of them for her

STATEMENT BY EMPLOYEE:

EAST
[REDACTED] refused to sign & denied all [REDACTED]

RESOLUTION OF PROBLEM OR ACTION TAKEN:

getting to work on time & working as a team or suspension possible

Marilyn Branton BN
Signature of Staff Member

8/20/96
Date

[REDACTED]
Signature of Employee

Date

EMPLOYEE COUNSELING FORM

DATE: September 21, 1997

EMPLOYEE: _____

PROBLEM: unprofessionalism - patient safety
Came on duty very argumentative, upset about not
having a partner, yelling & arguing at yourself & others
Stating you were going to quiet an argument between
you & another aide took place in a hallway, upsetting 2 Presidents, attempted to stop argument failed, you continued
to be upset most of day - language became foul & offensive

STATEMENT BY EMPLOYEE:

RESOLUTION OF PROBLEM OR ACTION TAKEN:

Attempts to tell you to calm down failed - staffing would
be complete - failed [REDACTED] you were way out of control
you were loud, scaring people. This time you spent
arguing someone could have choked or fallen - You forgot your
responsibilities - We could solve this by coming to me and I
if it suspends again - I would have to send you home to cool off
Dicker - One Reaction 9/22/97

Signature of Staff Member

Date

Signature of Employee

Data

EMPLOYEE COUNSELING FORM

DATE: 11-20-98

EMPLOYEE [REDACTED]

PROBLEM:

[REDACTED BEHAVIOR] - While working & knowing residents who are behavior problems he aware. Even though you had no warning of this behavior, in future watch for facial expression, rigidity of body, yelling out.

STATEMENT BY EMPLOYEE:

The nurse and I talked this over and will take more notice.

RESOLUTION OF PROBLEM OR ACTION TAKEN:

[REDACTED] I have gone over what to do with certain behavior problems & how to read a persons expression, & how to save yourself from being hurt by resident.

La-Ann Richon 11/20/98
Signature of Staff Member Date

[REDACTED]
Signature of Employee

Date

PERFORMANCE IMPROVEMENT PLAN

Name _____

Job Title CNAFacility Sandalwood

Nature of Concern:

 Absenteeism Dress Code Behavior Performance TardinessOther (describe) inappropriate conduct

Date(s) of Prior Disciplinary Notices in File: _____

Date(s) of Occurrence: November 28, 1998

Specific Description of Issue, Situation or Behavior (what, where, how): In searching out clothes in laundry dept. began using vulgar language becoming upset and losing control. Behavior cont'd. upside in hallway in hearing distance of residents. This behavior influenced & effected mood of other employees.

Immediate and Continued Change Needed for Success: speak to employee. Cautious & think about what she is going to say, + express it in more appropriate ways. More calm behavior needed.

Action Taken

 Documented Verbal Notice Suspension for _____ days to start on Written Notice

(Date) _____ and return to work on

 Termination

(Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: _____

Debra-Anne Rieser
Supervisor's Signature

12/3/98
Date

Employee's signature

12/3/98
Date

Employee Refused to sign - Requires Witness Signature
Comment

Deb Paton R
Dept. Head/Administrator

12/3/98
Date

Witness Signature

Date

Copy to Personnel File (White)

Employee (Canary)

Supervisor (Pink)

PERFORMANCE IMPROVEMENT PLAN

Name [REDACTED]

Job Title CNA

Facility

Sandalwood

Nature of Concern: Absenteeism Dress Code Behavior Performance
 Tardiness Other (describe) Following policy.

Date(s) of Prior Disciplinary Notices in File:

Date(s) of Occurrence: 12/4/98

Specific Description of Issue, Situation or Behavior (what, where, how):

If any injury occurs at work you need to report it to your manager immediately to ensure that you receive the proper Rx.

Immediate and Continued Change Needed for Success: Not following policy re: employee injury could lead to delayed Rx & delay in healing time + could lead to disciplinary actions.
Need to attend as scheduled on bridg mechanism & SDC.

Action Taken Documented Verbal Notice Suspension for _____ days to start on _____
 Written Notice (Date) _____ and return to work on _____
 Termination (Date) _____

Further performance problems of any kind may lead to further corrective action up to and including termination of employment.

Employee Comments: Sorry, but I don't know if it happen at work or not. So that is why I didn't report it.

Supervisor's Signature

Date

Employee's Signature

Date

 Employee Refused to Sign - Requires Witness Signature

Dept. Head/Administrator

Date

Witness Signature

Date